

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-148630-06

Date: SEPTEMBER 12, 2007

Re:

Legend

Decedent

Executors =

Accountant =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to a letter from your authorized representative dated September 29, 2006, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to perfect a protective election under § 2032A of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1 and the Executors of Decedent's estate timely filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return on Date 2. The Executor hired Accountant to prepare Form 706. Form 706 was prepared by Accountant and a protective election was made to value Decedent's timberland and farmland under § 2032A. The Service issued a closing letter on Date 3. Accountant failed to advise the estate that the protective election must be perfected within 60-days from the date of the closing letter.

Section 2032A(a)(1) provides, generally, that if the decedent was (at the time of his or her death) a citizen or resident of the United States, and the executor elects the application of this section and files the agreement referred to in § 2032A(d)(2), then for

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purposes of chapter 11, the value of qualified real property shall be its value for the use under which it qualifies, under § 2032A(b), as qualified real property.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such election, once made, shall be irrevocable.

Section 20.2032A-8(b) of the Estate Tax Regulations provides, in part, that a protective election may be made to specially value qualified real property. The availability of special use valuation pursuant to this election is contingent upon values as finally determined (or agreed to following examination of a return) meeting the requirements of § 2032A. The protective election is to be made by a notice of election filed with a timely estate tax return stating that a protective election under § 2032A is being made pending final determination of values. If it is found that the estate qualifies for special use valuation based upon values as finally determined (or agreed to following examination of a return), an additional notice of election must be filed within 60 days after the date of such determination.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extension of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax

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professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, the Executors are granted an extension of time of 60 days from the date of this letter to make the alternate valuation election under § 2032A. A copy of this letter should be forwarded to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter